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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL RICHARD LYNCH AND
STEPHEN KEITH CHAMBERLAIN

Defendants.

CASE NO. 3:18-cr-00577-CRB

**Defendant Stephen Chamberlain's Notice of
Motion and Motion for Issuance of
Subpoena to Hewlett Packard Pursuant to
Federal Rule of Criminal Procedure 17(c)
[Unopposed]; Memorandum of Points and
Authorities; Declaration of Michael C.
Landman**

Filed Concurrently with [PROPOSED]
ORDER

Date: November 29, 2023

Time: 1:30 p.m.

Place: Courtroom 6

Assigned to Hon. Charles R. Breyer

TO ALL PARTIES AND THEIR COUNSEL OF RECORD IN THIS ACTION:

PLEASE TAKE NOTICE that on November 29, 2023, or as soon thereafter as the matter may be heard, defendant Stephen Chamberlain, by and through counsel, will and hereby does move this Honorable Court for an order authorizing the issuance of a subpoena *duces tecum* to Hewlett Packard (“HP”) pursuant to Federal Rule of Criminal Procedure 17(c)(1) and Local Rule 17-2(a). The proposed subpoena is attached as Exhibit 1 of the concurrently filed Declaration of Michael C. Landman.

This motion is based upon the following Memorandum of Points and Authorities, the Declaration of Michael C. Landman submitted herewith, oral argument, and the pleadings and exhibits on file with the Court. Defendant Michael Lynch does not oppose the motion. The Government does not object to the issuance of the requested subpoena but notes the same concerns it expressed in its response to Dr. Lynch’s Rule 17(c) motion (ECF No. 260).

DATED: November 28, 2023

BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.By: /s/ Michael C. Landman

Gary S. Lincenberg
Ray S. Seilie
Michael C. Landman
Attorneys for Defendant Stephen Keith
Chamberlain

1 **MEMORANDUM OF POINTS AND AUTHORITES**

2 **I. INTRODUCTION AND BACKGROUND**

3 Defendant Stephen Chamberlain respectfully requests that the Court issue a subpoena
 4 *duces tecum* to HP pursuant to Federal Rule of Criminal Procedure 17(c). A copy of the proposed
 5 subpoena is attached as Exhibit 1 of the concurrently filed Declaration of Michael C. Landman
 6 (“Landman Decl.”). Defendant Michael Lynch does not oppose the issuance of the requested
 7 subpoena. Declaration of Michael C. Landman ¶ 8. The Government does not object to the
 8 issuance of the requested subpoena but notes the same concerns it expressed in its response to Dr.
 9 Lynch’s Rule 17(c) motion (ECF No. 260). *Id.*

10 Count 17 of the superseding indictment charges Mr. Chamberlain with directing “an HP
 11 finance employee to falsely record approximately \$5.5 million in revenue to be included in HP’s
 12 financial statements for the period ending January 31, 2012.” ECF No. 21 ¶ 34(e). The
 13 Government’s evidence surrounding this allegation comes from HP-Autonomy finance employee,
 14 Antonia Anderson. Landman Decl. ¶ 3, Ex. 2 at 8. As Ms. Anderson explained, the \$5.5 million
 15 accrual related to items where Autonomy “had done the work, but had not yet billed the
 16 customers.” *Id.* Ms. Anderson told the Government that she searched for records that would
 17 substantiate the \$5.5 million accrual but was unable to find anything. *Id.* at 9.

18 During the relevant period, Autonomy kept records related to the billing of its customers.
 19 Landman Decl. ¶ 4. Such records reflect when work is performed and when it is billed. *Id.*

20 The requested subpoena *duces tecum* seeks the following records:

21 All records related to the billing, invoicing and tracking of HP-
 22 Autonomy revenue associated with (1) support and maintenance, (2)
 23 professional services, and (3) hosting (together, “Three Revenue
 Streams”) including but not limited to:

24 (1) detailed sales ledger listings from all revenue
 25 systems (including ERP, Netsuite, NIBS, and
 Softrax) for the Three Revenue Streams;

26 (2) all invoices for the Three Revenue Streams;

27 (3) any spreadsheets or other documents that tracked
 28 worked performed by Autonomy-HP for the Three
 Revenue Streams; and

(4) any spreadsheets or other documents that tracked
billing related to the Three Revenue Streams

For the reporting periods ending on January 31, 2012 (Q1 2012) and
April 30, 2012 (Q2 2012).

Landman Decl. ¶ 2, Ex. 1.

The requested records are relevant to the allegations in overt act (e) of Count 17 because they will help Mr. Chamberlain demonstrate that the Q1 2012 accrual of revenue was based on work performed by Autonomy in Q1 2012 but not billed until Q2 2012.

II. ARGUMENT

Federal Rule of Criminal Procedure 17(c)(1) authorizes the Court to issue a subpoena to “order [a] witness to produce any books, papers, documents, data, or other objects the subpoena designates.” *See also* Local Rule 17-2. To compel production of documents before trial, the moving party must establish the four requirements set forth in *United States v. Nixon*, 418 U.S. 683, 699 (1974):

(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general “fishing expedition.”

The proposed subpoena meets all four *Nixon* requirements.

First, the requested documents are evidentiary and relevant. As discussed above, Mr. Chamberlain is charged with falsifying approximately \$5.5 million in revenue in Q1 2012. ECF No. 21, ¶ 34(e). The Government is expected to support this allegation by calling a single witness, Ms. Anderson, to testify that she accrued \$5.5 million in revenue at the direction of Messrs. Chamberlain and Hussain, and that she was unable to find any documentary support for it. Landman Decl. ¶ 3, Ex. 2 at 8-9. If Ms. Anderson’s expected testimony is accurate, it would suggest that Autonomy billed for *all* of the work it performed in Q1 2012 (related to support and maintenance, professional services and hosting) *before* the end of the quarter. If the requested records show billing in early-Q2 2012 for work performed in late-Q1 2012, such records are

1 inconsistent with Ms. Anderson's testimony. Given Autonomy's history of accruing revenue each
2 quarter for work performed prior to but not billed until after the close of the quarter, it is expected
3 that the requested records would call into question Ms. Anderson's anticipated testimony. Such
4 records are important to Mr. Chamberlain's defense and admissible as business records of
5 Autonomy.

6 *Second*, the information sought by the subpoena is not otherwise procurable in advance of
7 trial or otherwise. The documents sought are exclusively within the possession, custody, and
8 control of HP. Landman Decl. ¶ 5. Therefore they cannot be otherwise obtained in advance of trial
9 through other means.

10 *Third*, Chamberlain cannot reasonably prepare for trial without reviewing the requested
11 records. Landman Decl. ¶ 6. As discussed above, these records are critical in addressing Ms.
12 Anderson's anticipated testimony that the entirety of the Q1 2012 revenue accrual was
13 unsubstantiated. Mr. Chamberlain and his team will need to review these records to determine
14 whether such work was performed in Q1 2012. This must be done in advance of trial in order to
15 avoid mid-trial delay and to allow Mr. Chamberlain to effectively prepare a defense to Count 17.
16 *Id.* ¶ 7.

17 *Fourth*, this application is made in good faith and cannot be dismissed as a mere fishing
18 expedition. Chamberlain seeks a narrow category of documents from a limited period of time.
19 Landman Decl. ¶ 2, Ex. 1. He has tailored the subpoena in a manner that is broad enough to ensure
20 that he receives responsive records but narrow enough to avoid the appearance of a fishing
21 expedition. *Id.*

1 **III. CONCLUSION**

2 For these reasons, the Court should grant Mr. Chamberlain's unopposed motion and issue
3 the subpoena to HP attached as Exhibit 1 to the accompanying Declaration of Michael C.
4 Landman.

5
6 DATED: November 28, 2023

BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.

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8
9 By: /s/ Michael C. Landman

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